

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

WILLIAM JOSEPH MOYERS, JR.,

Plaintiff,

v.

No.: 3:07-cv-393
(VARLAN/GUYTON)

THOMAS SHUDAN,

Defendant.

MEMORANDUM AND ORDER

This is a *pro se* prisoner's civil rights complaint under 42 U.S.C. § 1983 which is set for a jury trial on July 29, 2009. The matter is before the court on several motions filed by the plaintiff.

Plaintiff filed a motion for entry of default against the defendant. After the motion for entry of default was received by the court, but before the motion was docketed, the defendant through counsel filed his answer to the complaint. Plaintiff then filed a motion to strike the defendant's answer. Under the circumstances, and based upon the record as a whole, plaintiff's motion for entry of default [Doc. 25] and his motion to strike the defendant's answer [Doc. 31] are **DENIED**.

Plaintiff has also filed a motion for appointment of counsel. The appointment of counsel in a civil case is a matter within the discretion of the court. *Childs v. Pellegrin*, 822 F.2d 1382, 1384 (6th Cir. 1987). After careful consideration of plaintiff's motion, including the type and nature of the case, its complexity, and the plaintiff's ability to prosecute his

claim, this court is of the opinion that counsel is not necessary at this time to ensure that plaintiff's claims are fairly heard. *See Knop v. Johnson*, 977 F.2d 996 (6th Cir. 1992); *Mira v. Marshall*, 806 F.2d 636 (6th Cir. 1986). Plaintiff's motion for appointment of counsel [Doc. 30] is **DENIED**.

Plaintiff's motion for a writ of habeas corpus ad testificandum [Doc. No. 33] is **GRANTED** to the extent the Clerk is **DIRECTED** to issue a writ of habeas corpus ad testificandum for the plaintiff's at trial at the appropriate time.

ENTER :

s/ Thomas A. Varlan

UNITED STATES DISTRICT JUDGE